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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,753	02/10/2004	Todd Craig	PI028/00P12-U	8722
24350 7590 07/28/2008 STITES & HARBISON, PLLC 400 W MARKET ST SUITE 1800 LOUISVILLE, KY 40202-3352				
EXAMINER HICKS, ROBERT J				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
07/28/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/775,753

Applicant(s)

CRAIG ET AL.

Examiner

ROBERT J. HICKS

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 14-30 is/are pending in the application.
- 4a) Of the above claim(s) 15-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/888)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment filed on May 16, 2008 under 37 CFR 1.111 has been entered. The examiner acknowledges the amendments to the claims. Claims 10-13 and 31 have been cancelled as per the applicant's amendments.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

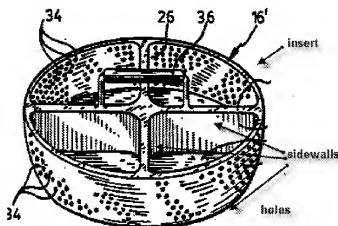
3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. **Claims 14, 1-2, and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deneault et al. (USPN 5,402,714) [hereinafter Deneault] in view of Carollo (USPN 5,622,742).**

5. Regarding Claims 14 and 1, the patent to Deneault – a fondue pot partitioning array – discloses an apparatus (10) comprising: a pan (12',13'); and an insert (16') adapted to fit within a pan (Col. 3 Lines 41-45), the insert comprising: a plurality of

sidewalls (26, 28, Fig. 2) extending between a base of the insert and an upper portion of the insert (Fig. 2), the sidewalls generally surrounding a plurality of openings (34) defined by the insert in the base (Col. 4 Lines 2-8). The holes could also appear at the bottom of the insert as well.



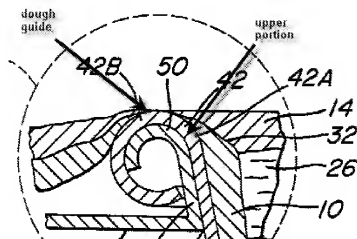
Deneault does not expressly disclose that the insert can hold multiple pizzas for the pizza to contact the bottom of the pan and the sidewalls of the insert; however, the patent to Carollo - a baking pan for pizzas - discloses an insert (**Carollo**, 36A-D) adapted to fit within a pan (**Carollo**, 20, Col. 3 Lines 30-33) such that multiple pizzas (**Carollo**, 22) held by the insert (**Carollo**, Fig. 5) is able to contact a bottom of the pan and the sidewalls of the insert (**Carollo**, Col. 5 Lines 4-9, and Lines 12-15). The vents at the bottom of the Carollo insert would appear to allow the bottom portion of the pizzas to touch a cooking or heating surface. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the Deneault frame and pan to have the insert be able to hold pizzas as each pizza contacts a bottom of the pan and the sidewall of the insert as

Art Unit: 3781

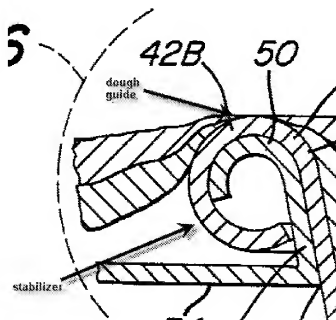
suggested by Carollo, since "This enables the heat from the oven floor to be quickly conducted to the cavity sections **36A-D** holding the stuffed pizza...." (**Carollo**, Col. 5 Lines 7-9), and "so that the bottom surface of the base walls **38** of each of the cavity sections **36A-36D** is disposed on the heated oven floor." (**Carollo**, Col. 5 Lines 5-7).

6. Regarding Claim 2, Deneault in view of Carollo discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Carollo discloses the insert defines a center bar (**Carollo**, 42B) disposed above the upper portion of the insert (**Carollo**, 36A-D); further wherein the center bar and the sidewalls are arranged such that a single sheet of dough (**Carollo**, 14) laid across the insert is readily divided along the center bar to form separate crusts for the multiple pizzas (**Carollo**, Fig. 3, Col. 3 Lines 44-51).

7. Regarding Claim 5, Deneault in view of Carollo discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Carollo discloses the insert defines a plurality of dough guides (**Carollo**, 42B) adapted to generally center dough (**Carollo**, 10 and 14) laid across the insert, the dough guides extending above the upper portion (**Carollo**, Fig. 6).



8. Regarding Claims 6-7, Deneault in view of Carollo discloses all the limitations substantially as claimed, as applied to claims 5 and 1 above, respectfully; further, Carollo discloses the insert defines a plurality of stabilizers (**Carollo**, Fig. 6) spaced from the sidewalls (**Carollo**, 40) and extending from the dough guides toward the base, the stabilizers being adapted to stabilize the insert within the pan (**Carollo**, Col. 4 Lines 10-14).

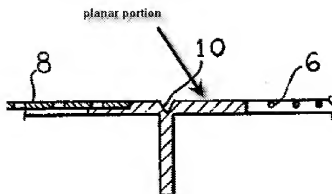


Art Unit: 3781

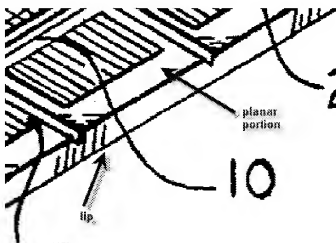
9. Regarding Claim 8, Deneault in view of Carollo discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Carollo discloses the sidewalls are angled with respect to the base (**Carollo**, Fig. 3) in a manner to create the multiple pizzas from a single sheet of dough laid across the insert (**Carollo**, Col. 5 Line 54 to Col. 6 Line 2). Pan pizza is made from a single sheet of dough, as is known to one of ordinary skill in the art.

10. Claims 3-4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deneault in view of Carollo as applied to claim 1 above, and further in view of Federico (USPN 3,899,962).

11. Regarding Claim 3, Deneault in view of Carollo discloses all the limitations substantially as claimed, as applied to claim 1 above. The Deneault and Carollo combination does not expressly disclose that the insert defines a generally planar platform extending in the upper portion outwardly from the sidewalls; however, the patent to Federico – a pastry and pizza baking apparatus – discloses a pan (**Federico**, F) with an insert (**Federico**, T) that has a planar platform (**Federico**, Fig. 3) in the upper portion outwardly from sidewalls. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the insert in the Deneault and Carollo combination pizza pan to have a planar portion extending in the upper portion, as suggested by Federico, which “insures uniform heat transfer from the oven floor, or subjacent heating means to the crust, for cooking the pastry precisely uniformly throughout and to the desired extent....” (**Federico**, Col. 2 Lines 62-65)



12. Regarding Claim 4, Deneault in view of Carollo in view of Federico discloses all the limitations substantially as claimed, as applied to claim 3 above; further, Federico teaches a lip extending toward the base and disposed along an edge of the platform to structurally strengthen the insert (**Federico**, Fig. 1). A recitation of the intended use of the claimed invention (e.g. "to structurally strengthen the insert") must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.



13. Regarding Claim 9, Deneault in view of Carollo discloses all the limitations substantially as claimed, as applied to claim 1 above. The Deneault and Carollo combination does not expressly disclose that the insert defines a generally rectangular shape; further wherein the openings are two in number and are of a generally square shape for forming two generally square pizzas. However, the patent to Federico teaches the insert (**Federico**, T) has a generally rectangular shape (**Federico**, Fig. 1) wherein the openings are two in number (**Federico**, Col. 1 Lines 35-42), and are generally square shape for forming two generally square pizzas (**Federico**, Abstract Lines 18-19). Federico discloses that the tray element provides "discontinuous supporting means for individual portions" (**Federico**, Col. 1 Lines 36-37), "either as transverse longitudinal wires **6**, wire cloth or screening **7**, or perforated sheet metal **8**." (**Federico**, Col. 2 Lines 20-21). There appears to be openings in the tray element, and the tray element has two openings. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the insert in the Deneault and Carollo combination pizza pan to have a rectangular insert and two openings in the insert, as suggested by Federico, "to facilitate dividing the pastry into individual serving size pieces ... generally corresponding to cells defined by the grid." (**Federico**, Col. 1 Lines 39-42)

Deneault in view of Carollo in view of Federico discloses the claimed invention, except for the openings are not square in shape. Federico does disclose "the sheet and tray normally being so dimensioned as to accommodate a pastry of sufficient size to enable a number of serving size pieces to be made from it, and usually although not

necessarily, rectangular in general outline." (**Federico**, Abstract Lines 18-19). The examiner interprets this statement to mean that one of ordinary skill in the art could make the outline of the pastry pieces square in shape. It would have been an obvious matter of design choice to Describe make the size of the tray openings in the Deneault, Carollo, and Federico combination pizza pan to be square in shape, since applicant has not disclosed that making the tray openings square in shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the openings in the tray insert to be square in shape "to facilitate dividing the pastry into individual serving size pieces ... generally corresponding to cells defined by the grid." (**Federico**, Col. 1 Lines 39-42)

Response to Arguments

14. Applicant's arguments filed May 16, 2008 have been fully considered but they are not persuasive.
15. In response to applicant's argument that the Carollo references fail to show certain features of applicant's invention [**Remarks**, Page 8 Lines 19-20, Page 9 Lines 1-2, Page 10 Lines 9-10, and Page 11 Lines 9-10], it is noted that the features upon which applicant relies (i.e., "the insert 50 has open end(s) to allow dough placed in the insert to contact the bottom 20 of the pan 15 supporting the insert 50") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Election/Restrictions

16. This application contains claims 15-30 drawn to an invention nonelected without traverse in the reply filed on January 11, 2008. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144). See *MPEP* § 821.01.

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ROBERT J. HICKS** whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax

Art Unit: 3781

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/
Robert J. Hicks
Examiner, Art Unit 3781

/Anthony D Stashick/
Anthony D Stashick
Supervisory Patent Examiner, Art
Unit 3781